NO. 49087-1-II

COURT OF APPEALS,
DIVISION II

IN THE STATE OF WASHINGTON

CHUNYK & CONLEY/ QUAD C,
APPELLANT

v.

PATTI C. BOETTGER,
RESPONDENT

BRIEF OF RESPONDENT PATTI C. BOETTGER

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I. ISSUES

1. Was it within the trial court's proper exercise of discretion to exclude from evidence a prior jury's verdict which denied Ms. Boettger's claim for workers' compensation benefits for a two-month period predating the period of benefits decided by the jury in this case?
2. Was it within the trial court's proper exercise of discretion to deny Chunyk & Conley/ Quad C's motion for a new trial because there is substantial evidence which supports the jury's verdict?

II. INTRODUCTION AND STATEMENT OF THE CASE

A. Brief Identification of the Parties and Procedural History[1]

The subject of this case is Ms. Patti C. Boettger's entitlement to workers' compensation benefits during a specific period of time identified in an order issued by the Washington State Department of Labor & Industries (Department). Ms. Boettger's claim is open, though benefits have not been paid by the self-insured employer for nearly 11 years.

[1] Respondent Boettger adopts and incorporates by reference the Department of Labor and Industries' Brief of Respondent. In the interest of efficiency and to avoid unnecessary duplication, additional facts and argument are included in this brief only to the extent necessary for the arguments presented herein, narrative completeness, or in specific response to the Appellant.

The appellant is a now-out of business self-insured employer, Chunyk & Conley/Quad C (Quad C). The respondents are Ms. Patti C. Boettger, an injured worker, and the Department of Labor & Industries. Ms. Boettger and the Department have been aligned throughout the employer's appeals in this matter.

Ms. Boettger was injured on the job while working a nurse and restorative coordinator for the appellant in 1998. While trying to stop a resident patient from falling, Ms. Boettger and the patient fell to the floor. Ms. Boettger injured her back. Various types of benefits – both medical and wage replacement (termed by statute "temporary, total disability" benefits, though more commonly called "time loss compensation") – have historically been paid by Quad C. In 2004, due primarily to her upcoming back surgery, and in part because she and her supervisors didn't get along, Ms. Boettger left her employment at Quad C. After her back surgery, she developed major depressive disorder as well as a pain disorder and, as a result, has been unable to work.

In late 2006, the Department ordered Quad C to pay Ms. Boettger time loss compensation for the period of August 19, 2006 through October 23, 2006[2]. Quad C appealed that order to the Board, and losing there, appealed again to superior court. In 2009, a Pierce County jury reversed the Board and the Department and determined that Quad C did not have to pay Ms. Boettger time

[2] This period is not at issue in this case, but because of the issues raised by the appellant, and because the underlying facts are not in dispute, they are included here.

loss compensation from August 19, 2006 through October 23, 2006. The jury's verdict was not appealed further.

Because Ms. Boettger's claim was still open, the Department remained obligated to continue overseeing the adjudication of her claim. After the 2009 trial, and upon a request to intervene and adjudicate Ms. Boettger's entitlement to time loss compensation for the period immediately following the one addressed by the 2009 jury, the Department determined that she was a temporarily and totally disabled worker and therefore entitled to time loss compensation for the next period over which the Department had jurisdiction – October 24, 2006 through September 27, 2010. The Department issued an order requiring Quad C to pay these benefits on September 28, 2010. After considering a protest filed by Quad C, the Department affirmed the September 28, 2010, order on May 17, 2012. It is from this Department order that Quad C appealed to the Board of Industrial Insurance Appeals (Board), the Pierce County Superior Court, and now this Court.

B. Summary of Evidence Presented by Appellant

In its notice of appeal to the Board, Quad C specifically contested Ms. Boettger's entitlement to time loss compensation for the period at issue. CP 129-130. Furthermore, the "Issue Presented" to the Board was "[w]hether the claimant is entitled to time-loss benefits for the period of 10/24/2006 through 9/27/2010." CP 217.

At trial, Quad C called two one-time examining medical witnesses, Drs. Richard Schneider and Thomas Williamson-Kirkland; a limited treating medical witness, Dr. Michael McManus; and a vocational counselor, Mr. Loren Forsberg. Contrary to the assertions made by Quad C, Dr. Schneider did not testify in the prior case ultimately decided by the 2009 jury.[3]

Dr. Schneider examined Ms. Boettger once, on September 20, 2006. CP 350. He formed opinions about Ms. Boettger's availability to work from a psychiatric perspective only. CP 351. Dr. Schneider reached two diagnoses as a result of his evaluation: "major depressive disorder causally related to the January 22, 1998 industrial injury and its aftermath," and "pain disorder with psychological factors and a general medical condition causally related to the January 22, 1998 industrial accident." CP 357-358. He also agreed that Ms. Boettger's "dissent into depression and chronic pain is clearly related to the January 22, 1998 industrial injury and its aftermath." CP 362. Dr. Schneider further confirmed that "Ms. Boettger's inability to function at work is because of the pain that she experiences and body limitations." CP 363.

[3] Ms. Mason, undersigned counsel for Ms. Boettger, also participated in the 2009 jury trial and the earlier proceedings related to it before the Department and the Board. It is acknowledged that none of the evidence from that case is before this court, which makes it difficult to correct the likely innocent mistake by the appellant suggesting Dr. Schneider testified in the earlier case. He did not. The case files have been carefully reviewed and confirm that Dr. Schneider was not a witness in the prior appeal, nor was Todd Gendreau, a vocational witness called by Ms. Boettger.

Somewhat confusingly, on redirect, Dr. Schneider testified that he did not identify obstacles of a "psychiatric or mental or emotional nature" that precluded

Ms. Boettger from work. CP 365-366. However, on re-cross he again endorsed that Ms. Boettger's inability to function at work is because of the pain that she is experiencing and body limitations." CP 366-367.

Dr. Williamson-Kirkland also was called as a witness by the employer. By the time he testified in this case, he had not evaluated patients in any setting for four years, and had retired from the practice of medicine. CP 297. He evaluated Ms. Boettger on one occasion, November 8, 2006, and the opinions were specifically offered were as of that date only. CP 256, 286. He testified that considering just Ms. Boettger's back injury, he believed she could work. CP 257. However, he further testified: "[t]here are multiple barriers to Ms. Boettger's recovery. The most important of these are COPD, lack of vision, abdominal pain, and then her back disability. She has multiple medical problems that cause her to be disabled and unable to work." CP 286 (emphasis added). Dr. Williamson-Kirkland never reviewed, approved, or testified about any job analysis. CP 298-299.

Dr. Michael McManus was an attending physician of Ms. Boettger's but his treatment and opinions ended as of January, 2007. CP 503, 508. He had no opinions about Ms. Boettger after January, 2007, or in 2008, 2009,

2010, 2011, 2012, or 2013. CP 508. In August, 2006, Dr. McManus did approve a light duty, part-time return to work with restrictions, including no driving. CP 507. Dr. McManus only treated Ms. Boettger's physical conditions and deferred to her psychiatrist, Dr. Pearson, for all issues relating to her mental health, including its impact on her employability. CP 507. Dr. McManus specifically deferred to Dr. Pearson as follows:

> Q: And if Dr. Pearson was of the opinion that Ms. Boettger was not able to work during 2006 through to the present[4] because of her mental health condition, would you defer to his opinion on that?
>
> A: Yes.

CP 508.

Mr. Forsberg, a vocational counselor, testified at the request of Quad C. In 2006, he had been hired by the claims administrator to return her to work. CP 318. He never prepared a document requesting that Ms. Boettger be found employable by the Department. CP 329. He testified that the Heritage job was put together as a "favor" for Quad C, and that this was something different than his normal experience. CP 334. He confirmed that

[4] The "present" at that time was the date of his perpetuation deposition, February 27, 2013. CP 502.

Ms. Boettger was never released by any physician to perform her job of injury. CP 334.

C. Summary of Evidence Presented by Ms. Boettger and the Department of Labor and Industries.

Ms. Boettger called her treating and attending psychiatrist, Dr. Michael Pearson, as an expert witness. Ms. Boettger adopts the brief summary provided by the Department it its brief and his testimony will not be fully summarized again here.

Dr. Pearson began treating Ms. Boettger in August, 2006. CP 517. He treated her for the entire period of time covered by the order on appeal. CP 523. Ms. Boettger's first appointment was after an emergency room visit necessitated by extreme psychiatric distress, including suicidal thoughts and plans. CP 518. He noted at that first appointment that "she was tearful, appeared older than her age and was in considerable distress...her mood was depressed...behaviorally she had psychomotor retardation. Speech was slow." CP 518. Dr. Pearson explained how depression can affect a person's cognitive skills and ability:

> "[depression] does slow thinking down. And then depression is thought to affect the frontal lobes of the brain, which are where what we consider executive functions to be located. And these functions include the ability to pay attention, to remember, to make decisions and judgments about things, to plan, to organize."

CP 526. Dr. Pearson sees the above in Ms. Boettger, though she is not always the same. CP 526-527. She also suffers from short term memory issues due to her depression. CP 527. Since their initial appointment, Ms. Boettger has never been depression free. CP 533. Dr. Pearson testified that Ms. Boettger suffers from both major depressive disorder and pain disorder. CP 538.

He confirmed that both interfere with her ability to obtain and perform work. CP 539. During his treatment, Dr. Pearson also noted that on occasion, Ms. Boettger's depression and pain disorder manifested with symptoms of anxiety, anger, lack of motivation/energy, lack of appetite, guilt, passive suicidal ideation, pain, and sleep disruption. CP 564-565.

Ms. Boettger also presented the testimony of Mr. Todd Gendreau, a vocational expert, certified as such by the Department. He testified that he has been employed in this capacity since 1997, and during this time, he has "never encountered a job offer with a different employer than the job at the time of injury." CP 442. Furthermore, Department policies require that job offers such as the one at issue in this case be made by the employer of injury. CP 447. Mr. Gendreau also questioned the accuracy of the job analysis prepared by Quad C's witness as well as whether Ms. Boettger has the physical, mental, and emotional capacities to perform the job at Heritage. CP 446. For example, he explained that short term memory and difficulty concentrating would be inconsistent with successful employment in a

supervisory capacity like the Heritage job. CP 446. With these limitations, it would be difficult to perform skilled work. CP 447. Mr. Gendreau testified that in his opinion, Ms. Boettger was not employable during the period of time at issue in this appeal. CP 449. He also testified that he thought it was inappropriate for Quad C to force Ms. Boettger to accept a job with a different employer. CP 450.

D. 2009 Jury Verdict[5]

At the close of the hearing at the Board on March 29, 2013, Quad C attempted to submit into evidence the verdict and findings of fact from the appeal finally decided by a 2009 jury in Pierce County. CP 367. Counsel for Quad C sought to simply hand the documents to the judge and have them included as evidence and the "law of the case." CP 368. Counsel for Ms. Boettger and the Department objected, noting that the prior verdict was irrelevant to the issues in the current appeal because they dealt with a different period of time. CP 368. The judge agreed that he "can" take judicial notice of what happened in the superior court case,

> "but I am not going to make that an exhibit, because I don't think that would be appropriate but I can make – [...] I can make reference to the jurisdictional history, which acknowledges there was a verdict and then the Department's order follows that, which applied to the verdict. But in terms of whether it's the law of the case, and whether that applies to this, I am just going to have to sort that out when I get to the proposed

[5] See Footnote 2, supra.

> decision and order, and based on my understanding of what the law is and what the appeals covers and that sort of thing."

CP 369-370.

Quad C raised the issue again in a later hearing and counsel for Quad C asked the judge "I think you took them [copies of verdict, etc.] under advisement and potentially there would be judicial notice of these documents?" CP 460. The judge responded:

> "The only thing I recall is that I indicated that I would take judicial notice of them if I thought it was appropriate to do that. I don't know whether you tried to offer them as an exhibit. If you did, I'm sure I said I didn't think it was appropriate to actually consider them as exhibits."

CP 460 (emphasis added). Contrary to the assertions of Quad C, the Industrial Appeals Judge never said he would take judicial notice of the prior verdict, and he never agreed that the prior verdict was the law of the case. Suggestions otherwise are not supported by a complete reading of the transcripts.

Upon review, the Board did discuss the prior verdict. The 2009 verdict was an issue raised with the Industrial Appeals Judge on the record on multiple occasions, and Quad C presented arguments related to it to the Board in its petition for review. Given the Board's silence in response, it is clear Quad C's claims were unsuccessful. The Industrial Appeals Judge and the Board affirmed the Department's order that Ms. Boettger was a temporarily, totally disabled worker for the period October 24, 2006 through September 27, 2010. CP 29.

Notwithstanding the fact that the prior case dealt with a prior period of time, and that the evidence presented in these cases included different witnesses, Quad C continued to insist to the trial court that the 2009 jury verdict is relevant. These arguments were made as part of Motions in Limine, objections to Quad C's ER904 Submissions, during the jury instructions process, and again in post-trial motions. The issue has again been raised on appeal as the basis for a new trial on remand. This Court, like those below it, should reject Quad C's arguments about the relevance of the 2009 verdict in all matters relating to the dispute about Ms. Boettger's entitlement to benefits from October 24, 2006 through September 27, 2010.

III. STANDARD OF REVIEW

Under the Industrial Insurance Act, it is the decision of the Superior Court that the appellate court reviews, utilizing the ordinary standard of review for civil cases. RCW 51.52.140; Watson v. Dept. of Labor & Indus., 133 Wn. App. 903, 909, 138 P.3d 177 (2006). Appellate courts review the Board's record only to determine whether substantial evidence supports the trial court's factual findings; then, review is *de novo*, as to whether the trial court's conclusions of law flow from the trial court's findings. Id., 133 Wn. App. at 909, 138 P.3d 177; Ruse v. Dept. of Labor & Indus., 138 Wn.2d 1, 5-6, 977 P.2d 570 (1999) (quoting Young v. Dept. of Labor & Indus., 81 Wn. App 123, 128, 913 P.2d 402 (1996)). Substantial evidence is evidence

sufficient to persuade a fair-minded person of the truth of the declared premise. Garrett Freightliners, Inc. v Dept. of Labor & Industries, 45 Wn. App. 335, 340, 725 P.2d 463 (1986). In determining whether there is substantial evidence, the record on appeal is to be reviewed in the light most favorable for the prevailing party. Harrison Mem'l Hosp. v. Gagnon, 110 Wn. App. 475, 485, 40 P.3d 1221 (2001) (emphasis added). Appellate courts are not to "re-weigh or re-balance the competing testimony and inferences or apply anew the burden of persuasion, for doing that would abridge the right to trial by jury." Id. The appellate court does not review he Board's decision; the Administrative Procedures Act does not apply. Rogers v. Dept. of Labor & Indus., 151 Wn. App. 174, 179-81, 201 P.3d 355 (2009).

Trial court's rulings on the admissibility of evidence are reviewed for abuse of discretion. Burnside v. Simpson Paper Co., 123 Wn.2d 93, 107, 864 P.2d 937 (1994).

Finally, a trial court's decisions regarding instructing the jury are also reviewed for an abuse of discretion. Clark County v. McManus, 185 Wn.2d 466, 372 P.3d 764 (2016), citing Stiley v. Block, 130 Wn.2d 486, 498, 925 P.2d 194 (1996); see also Herring v. Dept. of Social & Health Services, 81 Wn. App. 1, 27, 914 P.2d 67 (1996). However, even if a trial court errs, reversal for new trial is only appropriate if the error affects the trial's outcome. Stiley, 130 Wn.2d 498-99. Jury instructions are sufficient when

they allow the parties to argue the theory of the case, are not misleading, and when read as a whole, properly inform the jury of the applicable law. Keller v. City of Spokane, 146 Wn.2d 237, 249, 44 P.3d 845 (2002); See also Judd v. Dept. of Labor & Indus., 63 Wn. App. 471, 476, 820 P.2d 62 (1991).

IV. ARGUMENT

A. The Trial Court Did Not Abuse its Discretion in Denying Appellant's Repeated Attempts to Inform the 2015 Jury about the 2009 Jury's Verdict.

Quad C relentlessly insisted that the jury verdict from 2009 should be included in the 2015 case for the jury's consideration. Regardless of the mechanism used to inform the jury, it would be improper to do so and error on a number of grounds.

1. The 2009 verdict is irrelevant and the "Law of the Case" doctrine does not apply.

The only order on appeal in this case concerns the period of October 24, 2006 through September 27, 2010. As a practical matter, the Department issues many orders during the course of a claim when the worker has suffered a serious injury. Periods of wage replacement benefits are generally issued sequentially – that is one period is paid at a time. Under normal circumstances, in an open claim when ongoing temporary, total disability payments are being issued by the Department or a self-insured employer, payments are made in 14 day, back-dated periods; benefits are not paid prospectively. The payment or denial of

benefits for one period of time is not dispositive of whether they are payable for a prior or subsequent period. For a variety of reasons, some payment periods are longer – like when entitlement is disputed, or when medical certification is late or lacking. The case of In re: Tom Camp is illustrative.[6] BIIA Dec. 38,035 (1973).

Mr. Camp was an injured worker and his employer disputed his entitlement to temporary, total disability benefits for a six-month period from June to December in 1970. The Industrial Appeals Judge agreed with the employer and found that Mr. Camp was not entitled to benefits, and also prospectively denied all future benefits that might be ordered after the last date of the period at issue in the appeal. The full Board reversed the judge and explained:

> "The fallacy of this reasoning lies in the fact that each time loss order issued by the Department constitutes an original determination in and of itself and is not in any way based upon or determined by any other time loss order. Each time loss order is an independent adjudication by the Department that the claimant was temporarily and totally disabled for whatever period of time is specified in the order. It is based on the certification of disability submitted by the attending doctor covering the period of time specified in the order. Such order is a final appealable determination as to the claimant's right to time loss compensation for that particular period of time. No time loss order covering any period of

[6] This is a "Significant Decision" of the Board pursuant to 51.52.160. The Board's Significant Decisions are entitled to substantial weight because it has special knowledge and expertise in Industrial Insurance Matters. See Roller v. Dept. of Labor & Indus., 128 Wn. App. 402, 409, 97 P.2d 17 (2004). The Board's Interpretations of the Industrial Insurance Act are entitled to great deference. See Littlejohn Constr. Co. v. Dept. of Labor & Indus., 74 Wn. App. 420, 324, 873 P.2d 583 (1997); Ackley-Bell v Seattle School Dist., 87 Wn. App. 158, 165, 940 P.2d 685 (1997).

> time subsequent to December 10, 1970, is on appeal before us, and we are therefore without jurisdiction to determine the claimant's eligibility or right to tome loss compensation for any period of time subsequent to December 10, 1970."

(emphasis added). As explained by the Board, the periods of time contained in the individual orders issued by the Department are jurisdictional – any appeal is limited by the scope of the order itself. Id. The same would be true in the reverse situation as well – had the 2009 jury upheld the Department's order awarding her benefits, she would not then be able to go back to the Department and insist, on that basis alone, she is entitled to additional benefits, for subsequent periods of time.

The issues the Board can consider are fixed by the order on appeal. Lenk v. Dept. of Labor & Indus., 3 Wn. App. 977, 982, 4789 P.2d 761 (1970). The same is true in further appeals. RCW 51.52.110. This has been true through the history of Washington's workers' compensation jurisprudence – in 1936, the state Supreme Court admonished "it must be remembered that the questions to be decided by the joint board[7] are not determined by the allegations set forth in the petition for rehearing, but are fixed by the order which is sought to be reviewed. Woodard v. Dept. of Labor & Indus., 188 Wash 93, 95, 61 P.2d 1003 (1936) (emphasis added).

Accordingly, the result of the 2009 trial where the jury decided

[7] The Board of Industrial Insurance Appeals' predecessor.

Ms. Boettger was not a totally, temporarily disabled worker and therefore not entitled to time loss compensation has no bearing, and is not relevant in the matter of the time period covered by the subsequent order, and decided by the Department in 2010, the Board in 2013, and by a jury in 2015. It was not error for the trial judge to exercise its discretion and deny Quad C's various requests to inform the jury of the 2009 trial result.

Furthermore, the "law of the case" doctrine is inapplicable here not only because the issues are different (i.e. a different time period is at issue), but also because the evidence presented was not the same in the two cases. Quad C is incorrect it its assertions that the same evidence was presented in both cases: neither Dr. Richard Schneider nor Mr. Todd Gendreau testified in the case heard by the 2009 jury. Quad C cited to Greene v. Rothschild, 68 Wn.2d 1, 414 P.2d 1013 (1966) in support of their arguments about the "law of the case." However, Greene and the several decisions discussed therein originate from a single event with one fact pattern. In Ms. Boettger's case, the time period at issue in the prior verdict and the one at issue in this trial focus on two, separate orders from the Department of Labor & Industries, with the orders addressing Ms. Boettger's mental and physical states over two, separate time periods. Of particular note is the timing of her treatment with Dr. Pearson, which was really established during the period at issue in the present case, but that was just starting during the period decided in 2009. The assertions by Quad C that this case has the same

facts as any before it is simply untrue. Furthermore, the witness list for the two trials is not the same: Dr. Richard Schneider and Mr. Todd Gendreau testified during the 2015 trial, but not the 2009 trial.[8]

2. The verdict was never admitted into evidence.

Moreover, the verdict was never properly admitted into evidence before the Board of Industrial Insurance Appeals. Rather awkwardly, at the close of its case in chief (no rebuttal evidence was sought or presented), the appellant tried to simply hand copies of the 2009 verdict and accompanying paperwork to the Industrial Appeals Judge stating they just wanted them to be included "as part of the file." CP 369. The judge refused the documents, stating "I am not going to make that an exhibit." CP 369. The documents were never marked nor accepted into the official Board evidentiary record because, as the judge explained, that "would not be appropriate." CP 369.

Since the prior verdict was never included in the Board evidentiary records, either as an admitted or rejected exhibit, it cannot simply be added to the evidence in superior court. Though Quad C eventually attached a copy of the verdict to a post-trial pleading, that alone does not make it part of the evidentiary record, reviewable on appeal. As this Court can see for itself in looking at the Certified Appeal Board Record (CP 27–572), there are a lot of pieces of paper

[8] See Footnote 3.

contained in a Board file that are not evidence on appeal. The Board's official record for review on appeal includes only "the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order." RCW 51.52.110.

Trial procedures in workers' compensation appeals to superior court are created by statute:

> "Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110: PROVIDED, that in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court... In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed; otherwise, it shall be reversed or modified."

RCW 51.52.115 (emphasis added). Since the 2009 verdict was never properly offered or admitted into evidence, it cannot properly be shared with the 2015 jury deciding the correctness of the subsequent order on appeal.

3. Even if relevant, the 2009 jury verdict is far more prejudicial than probative.

Under ER 403, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the

issues, or misleading the jury." While not agreeing that there is any probative value to the 2015 jury, there is no question that it has the potential to be extremely prejudicial to Ms. Boettger. That prior verdict, containing a one word answer ("no") in response to the question of Ms. Boettger's entitlement to benefits, presented to the jury devoid of the context of that trial, is a textbook example and indeed the very definition of the "pre-judgment" and "confusion" contemplated by ER 403. Quad C's incorrect arguments that the two cases have the same facts proves how they would use the 2009 verdict to confuse, influence, and mislead the jury about how to consider the evidence they heard in the case presented to them.

4. Admitting a prior jury verdict concerned with a different period of time than the one on appeal threatens the sanctity of the presumption that the Boards' decision in the current case is correct.

Any allowance of the appellant's attempts to introduce the 2009 verdict into evidence before a subsequent jury would erroneously undermine workers' compensation jurisprudence that the Board's decisions are presumed to be correct. The very statutes which allow appeals from Board decisions state: "the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same." RCW 51.52.115. "Prima facie" in this context means "that there is a presumption on appeal that the findings and decision of the board, based upon the facts presented to it, are correct until the trier of fact finds from a fair preponderance of the evidence that

such findings and decision of the board are incorrect." Allison v. Dept. of Labor & Indus., 66 Wn.2d 263, 401 P.2d 982 (1965) (emphasis added), quoting Groff v. Dept. of Labor & Indus., 65 Wn.2d 35, 395 P.2d 633 (1964); Sumerlin v. Dept. of Labor & Indus., 8 Wn.2d 43, 111 P.2d 603 (1941); McLaren v. Dept. of Labor & Indus., 6 Wn.2d 164, 107 P.2d 230 (1940); Alfredson v. Dept. of Labor & Indus., 5 Wn.2d 648, 105 P.2d 37 (1940).

The trial court properly excluded the 2009 verdict and correctly left undisturbed for the jury in the instructions that the Board is presumed correct, unless the appealing party could convince the jury with a "fair preponderance" of the evidence that it was incorrect. Had the 2009 verdict been shared with the jury, there is the very real risk that it would have undermined, if not outright erased, the statutory presumption of the correctness of the Board's decision. The jury would have had to weigh the 2009 verdict with the 2013 Board decision and, not only is there is no precedent for instructing the jury to engage in this weighing, it would be error to ask the jury to do so. There is no legal basis upon which this Court can change the legal presumption of the Board's correctness.

B. The Trial Court Did Not Abuse its Discretion in Denying Quad C a New Trial.

The Appellant's motion for new trial on the basis that Ms. Boettger could work on a part time basis at a light duty job is not supported by the evidence

and overlooks multiple statutory criteria precluding its arguments about light duty return to work situations under the Industrial Insurance Act.

1. None of the witnesses who testified released Ms. Boettger to work without significant restrictions and/or caveats, which when combined, provide substantial evidence of her entitlement to total, temporary disability benefits.

Without restating the testimony of the doctors summarized above, it bears repeating the following:

> Dr. Williamson-Kirkland did not review any job analyses as part of his evaluation of Ms. Boettger; the purpose of his evaluation was only to determine if additional treatment was necessary; and, his ultimate opinion was that she was unable to work, due in part to her back disability. Dr. Williamson-Kirkland offered no opinions about Ms. Boettger's condition or ability to work during 2007, 2008, 2009, 2010, all of which were the subject of the order on appeal. Supra.
>
> Dr. Richard Schneider offered, at best, contradictory and confusing opinions about Ms. Boettger's employability – but his final words on the subject were that her pain disorder, which was caused by her 1998 industrial injury and its residuals, made it impossible for her to function at work. Dr. Schneider was persistent in limiting his opinions to her psychiatric conditions. Dr. Schneider offered no opinions about Ms. Boettger's condition or ability to work during

2007, 2008, 2009, 2010, all which were the subject of the order on appeal. Supra.

Dr. Michael McManus limited his opinions to Ms. Boettger's physical ability to work; he deferred any opinions about whether Ms. Boettger's mental health prevented her from working to Dr. Pearson; his opinions were limited in time and offered only through January, 2007. He had no opinions about her ability to work after his last appointment in January 2007, 2008, 2009, 2010, all which were the subject of the order on appeal. Supra.

Dr. Michael Pearson was the only physician who provided ongoing, active treatment to Ms. Boettger during the entire period of time at issue in the appeal; he was resolute in his opinion that she was unable to work in any capacity as a result of her industrial injury. Supra.

Accordingly, there is sufficient evidence in the medical testimony alone for the jury to find that Ms. Boettger was a temporarily, totally disabled worker for the period of time identified in the order on appeal, and therefore entitled to time loss compensation. Contrary to the claims made by the appellant, it never met its burden of proof that the Department's order was incorrect because all of the medical witnesses testified that Ms. Boettger was

disabled, and unable to work: none released her to work without modifications and limitations.

2. The light duty job at Heritage was out of compliance with the applicable statute on Light Duty Return to Work and was therefore invalid.

Light-duty jobs (defined in statute as "available work other than his or her usual work") for injured workers may seem a deceptively simple subject. However, it is often fraught with complications and complexities. There are legitimate incentives for both injured workers and employers of injury to get injured workers back on the job. However, to protect both workers and employers and to prevent abuse and deceptive practices, there are rules that employers and doctors must follow. Employers push return to work on workers to save claim costs, which for self-insured employers like Quad C, are direct, dollar-for-dollar claim costs. Properly executed, safe return to work opportunities can be beneficial for workers as well. However, due to its decision to shut down its businesses, Quad C did not, and could not, make a valid light-duty job offer to Ms. Boettger.

The procedures for workers returning to work following an industrial injury are delineated by statute and require (1) that the light duty job offer be made by the employer of injury, and (2) that the worker's attending physician – and not a panel or examining physician – release the injured worker back to

work. See RCW 51.32.090(4)(a)[9]; Glacier Northwest, Inc. v. Waker, 151 Wn. App. 398, 393, 212 P.3d 587 (2000); In re: O.C. Thompson, BIIA Dec. 60,203 (1983).[10] Here, Quad C attempted to manipulate the process for its own benefit without following the rules in the statute: the job offer was not with the employer of injury and it was not fully approved by Ms. Boettger's attending physicians.

a. Quad C was out of business and did not follow the statutory requirements for bringing Ms. Boettger back to work.

The statue governing light-duty return to work is RCW 51.32.090(4)(a).

It says, in pertinent part:

> "Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician or license advanced registered nurse practitioner as able to perform available work other than his or her usual work, the employer shall furnish to the physician or licensed advanced nurse practitioner, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician or licensed advanced nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced nurse practitioner shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician or licensed advanced nurse practitioner for the work, and begins the work with the employer of injury. [...]"

[9] This statute has been revised since 2010, but not in ways relevant to this appeal. The current subsection on this topic is RCW 51.32.090(4)(b). The version of this statue in effect in 2010 is attached as Appendix A.

[10] This is a "Significant Decision" of the Board pursuant to RCW 51.52.160.

(emphasis added). The appellant concedes that it was not in business at the time its vocational counselor put together the job offer on behalf of another employer. Accordingly, under the statute, Quad C could not make a valid job offer to Ms. Boettger.

When interpreting a statute, the language of the statute itself serves as the first basis for review. Glacier Northwest, 151 Wn. App. at 393, 212 P.3d 587. If the meaning of the statute is plain on its face, courts apply that meaning. Id., citing Tingey v. Haisch, 159 Wash.2d 652, 657, 15 P.3d 1020 (2007). If a case involves interpreting Washington's Industrial Insurance Act, Title 51 RCW, as this one does, all doubts but be resolved in favor of the injured worker. RCW 51.12.010.

In the present case, it is undisputed that at the period of time at issue, Quad C was no longer in business. Accordingly, it could not have offered Ms. Boettger a valid light-duty job offer in compliance with the statutory requirements in an effort to avoid paying her claim benefits. Rather than follow the statute, Quad C engaged a vocational consultant to go out and find another employer (Heritage Rehabilitation) and do a "favor" for Quad C to see if it could reduce its claim costs, without regard for controlling laws and policies. CP 332, 334.

b. Even if Quad C could have properly offered Ms. Boettger a light-duty job under the statute, it still is invalid because it was not

approved by both of her attending providers.

Turning to the second requirement, the Board of Industrial Insurance Appeals has issued its own "Significant Decision" regarding the relevant opinion for medically releasing an injured worker back to light duty work. In re: O.C. Thompson, BIIA Dec. 60,203 (1983).[11] In Thompson, his self-insured employer of injury sought to bring him back to light duty work, i.e. "work other than his usual work." Mr. Thompson had an attending physician who treated him for his back injury and several months after the date of injury, released him to return to light work with the employer of injury. Mr. Thompson's attending physician later rescinded the work release. In response, the employer sent Mr. Thompson to a "panel exam" for additional opinions. The doctors who performed that examination had a split in their opinions about Mr. Thompson's ability to work. Two of the four stated that he was not able to work at either job available; the other two thought he could. Relying on the two opinions finding Mr. Thompson able to work, the employer terminated Mr. Thompson's claim benefits. The Department ordered payment of benefits and the employer appealed to the Board. The Board agreed with Mr. Thompson and the Department that benefits were

[11] See Footnote 10.

payable. The Board held in Thompson that RCW 51.32.090(4)[12] requires that the worker's physician be responsible and charged with releasing the worker back to work: "temporary total disability benefits shall continue until the worker is released by his or her physician..." (emphasis added).

There is good reason attending physicians, and not one-time evaluators hired by employers, are the appropriate experts to determine, along with their patient and in conjunction with the written job analysis, whether new and different work tasks and duties are safe and appropriate for their patients following an injury. Treating physicians are in a far better position to observe their patients over time compared with hired, consulting physicians who examine injured workers at one appointment in an artificial setting that is not for purposes of treatment. See In re: Merle Free, Jr. BIIA Dec. 89 0199 (1990)[13]. Attending physicians have a special role in workers' compensation cases and their opinions are, by law, entitled to special consideration. Clark County v. McManus[14], 185 Wn.2d at 476; Shafer v. Dept. of Labor & Indus., 166 Wn.2d 710, 213 P.3d 591 (200(); Hamilton v. Department of Labor & Indus., 111 Wn.2d 569, 761 P.2d 618 (1988).

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[12] In 1983, there was yet another version of this statute that is included at length in the O.C. Thompson case attached. Again, the relevant language discussed here was also present in this earlier version of the statute.

[13] See Footnote 10.

[14] No relation to the witness in this case, Dr. Michael McManus.

In Shafer, the Washington State Supreme Court discussed the unique role attending physicians have in a patient's workers' compensation claim:

> "The IIA makes it abundantly clear that a worker's attending physician plays an important role once the worker has chosen that physician for treatment. For instance, the physician is required to inform the injured worker of his or her rights under the IIA and lend assistance in filing claims. RCW. 51.28.020(1)(b). Physicians are also required to follow rules and regulations adopted by the Department as well as provide reports to the Department regarding treatment given to the worker. RCW 51.35.060. In addition, there are other numerous other statutory and regulatory obligations than an attending physician is required to assume once the worker's claim is accepted by the Department."

166 Wn.2d at 720 (internal citations omitted). Accordingly, even if Dr. Williamson-Kirkland and Dr. Schneider did release Ms. Boettger to work, their opinions are irrelevant pursuant to the statute because neither were treating physicians. The only other release to work was Dr. McManus's, but his was limited in time to January, 2007, and he fully deferred to Dr. Pearson's opinions that Ms. Boettger's psychiatric conditions precluded her from work.

As a result, Quad C presented no evidence, much less evidence sufficient to vacate the jury's verdict and grant a new trial on the basis that Ms. Boettger could work part time and was therefore not entitled to time loss compensation for the period on appeal.

3. The Criteria for a New Trial under CR59 are not present in this case.

Quad C's CR 59 motion constituted an attempt to usurp the

constitutional province of the jury to decide on questions of fact. Wash. Const. art. 1, § 21 provides that "the right of trial by jury shall remain inviolate." As the Supreme Court has held,

> This provision is pregnant with meaning. The courts have no right to trench upon the province of the jury upon questions of fact. It is only where there is no evidence, either direct or circumstantial, which warrants the verdict of the jury, that the courts may interfere. In proper cases, the jury is an arm of the court; its province is to find the facts, and the province of the court is to declare the law.

State v. O'Connell, 83 Wn.2d 797, 523 P.2d 872 (1974), citing Jensen v. Shaw Show Case Co., 76 Wash. 419, 136 P. 698 (1913). Quad C's attempt to interfere with the jury's verdict should again be rejected by this Court because, as previously outlined, there is at least substantial evidence and a plethora of reasonable inferences which warrant sustaining the jury's view of the evidence and its verdict. Kohfeld v. United Pac. Ins. Co., 85 Wn. App. 34, 931 P.2d 911 (1997), citing Hizey v. Carpenter, 119 Wn.2d 251, 271-72, 830 P.2d 646 (1992) and Lockwood v. A C & S, Inc., 44 Wn. App. 330, 722 P.2d 826 (1986). Overturning a jury verdict requires that it be clearly unsupported by substantial evidence. McCoy v. Kent Nursery, Inc., 163 Wn. App. 744, 769, 260 P.3d 967 (2011), quoting, Faust v. Albertson, 167 Wash.2d 531, 538, 222 P.3d 1208 (2009). Appellate courts "defer to the trier of fact on issues involving conflicting testimony, credibility of the witnesses, and the

persuasiveness of evidence." McCoy, 163 Wn. App. at 769, additional citations to Faust omitted.

In order to grant a CR 59 motion, the evidence has to be "such that it would convince an unprejudiced, thinking mind of the truth of a declared premise." Kohfeld, supra, citing In re Way, 79 Wn. App. 184, 191, 901 P.2d 349 (1995). Here, an "unprejudiced, thinking mind" would not convolute the evidence to reach the conclusions argued by Quad C. As discussed in earlier sections and argued in the Department's brief, taking the evidence as a whole, there is no credible argument that Ms. Boettger was able to work on either a full or part-time basis during the period at issue. The only evidence identified by Quad C to support its CR59 motion is Dr. Pearson's testimony that Ms. Boettger was a totally disabled worker over the period in question. From this testimony, Quad C urges a tortured interpretation: that because Dr. Pearson stated on a number of occasions that Ms. Boettger could not work full-time, the proper implication is that she was able to work part-time. This is not a reasonable inference considering the totality of the evidence the jury considered.

V. CONCLUSION

This Court should affirm the verdict reached by the jury in this case. There is no credible evidence or argument that the trial court abused its discretion in denying Quad C's attempts to taint the 2015 trial and jury

deliberations with the 2009 jury verdict. There is substantial evidence supporting the jury's decision that Ms. Boettger was a totally, temporarily disabled worker during the period of time at issue in this case and entitled to time loss compensation. With this result, reasonable attorney fees pursuant to RCW 51.52.130, are hereby requested as well. A worker is entitled to attorney fees where a court sustains his right to relief in an employer's appeal. Young, 81 Wn. App. at 132: RCW 51.52.130.

RESPECTFULLY SUBMITTED this 23rd day of January, 2017.

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Appendix A

(b) Until July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be deemed to be ninety thousand dollars. Beginning on July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be adjusted as follows:

(i) Beginning on July 1, 1993, the amount payable for total bodily impairment under this section shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the amount payable for total bodily impairment prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(c) Until July 1, 1993, the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of ninety thousand dollars. Beginning on July 1, 1993, total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed a sum calculated as follows:

(i) Beginning on July 1, 1993, the sum shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(4) If permanent partial disability compensation is followed by permanent total disability compensation, any portion of the permanent partial disability compensation which exceeds the amount that would have been paid the injured worker if permanent total disability compensation had been paid in the first instance shall be, at the choosing of the injured worker, either: (a) Deducted from the worker's monthly pension benefits in an amount not to exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is less; or (b) deducted from the pension reserve of such injured worker and his or her monthly compensation payments shall be reduced accordingly.

(5) Should a worker receive an injury to a member or part of his or her body already, from whatever cause, permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such worker, his or her compensation for such partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

(6) When the compensation provided for in subsections (1) through (3) of this section exceeds three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured worker in full, except that the first monthly payment shall be in an amount equal to three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, and interest shall be paid at the rate of eight percent on the unpaid balance of such compensation commencing with the second monthly payment. However, upon application of the injured worker or survivor the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured worker or survivor to the department and shall rest in the discretion of the department depending upon the merits of each individual application. Upon the death of a worker all unpaid installments accrued shall be paid according to the payment schedule established prior to the death of the worker to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title.

(7) Awards payable under this section are governed by the schedule in effect on the date of injury. [2007 c 172 § 1; 1993 c 520 § 1; 1988 c 161 § 6, 1986 c 58 § 2; 1982 1st ex.s. c 20 § 2; 1979 c 104 § 1; 1977 ex.s. c 350 § 46; 1972 ex.s. c 43 § 21, 1971 ex.s. c 289 § 10; 1965 ex.s. c 165 § 1; 1961 c 274 § 3; 1961 c 23 § 51.32.080. Prior: 1957 c 70 § 32; prior: 1951 c 115 § 4; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Application—2007 c 172: "This act applies to all pension orders issued on or after July 22, 2007." [2007 c 172 § 2]

Additional notes found at www.leg.wa.gov

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(c) The prior closure of the claim or the receipt of permanent partial disability benefits shall not affect the rate at which loss of earning power benefits are calculated upon reopening the claim.

(4)(a) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work, the employer shall furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician or licensed advanced registered nurse practitioner.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.

(7) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (7)(b) is greater than one hundred percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section. [2007 c 284 § 3; 2007 c 190 § 1; 2004 c 65 § 9. Prior: 1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4; prior: 1988 c 161 § 3; 1986 c 59 § 3; (1986 c 59 § 2 expired June 30, 1989); prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Reviser's note: This section was amended by 2007 c 190 § 1 and by 2007 c 284 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 284: See note following RCW 51.32.050.

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030

Additional notes found at www.leg.wa.gov

51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. *(Expires June 30, 2013.)* (1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabili-

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

Chunyk & Conley/ Quad C, Appellant, vs. Patti C. Boettger, Respondent.	)	No.: 49087-1-II Certificate of Filing/Service

I, Jana Weaver, declare under penalty of perjury that I caused the following document to be filed/served as noted below:

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